

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPLICATION NO. 165 OF 2000.

The Commissioner of Income-tax,
Mumbai City-I, Mumbai.

... Petitioner.

V/s.

M/s Indian Express News Papers
(Bombay) Pvt.Ltd.

... Respondent.

Shri Parag Vyas for the applicant.

Shri P.J. Pardiwala with C.i/b Poorvi Kamani for
the respondent.

CORAM : V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 23rd August 2005.

P.C. :

. Heard learned Counsel appearing for the
Revenue.

. This application has been preferred by the
Revenue under section 256(2) of the Income-tax Act
with a prayer to refer following two questions of
law for the opinion of this Court.

1. Whether on the facts and in the
circumstances of the case and in law, the
Tribunal was right in upholding the order of
the CIT (A) directing the Assessing Officer
to allow investment Allowance?

2. Whether on the facts and in the
circumstances of the case and in law, the
Tribunal was right in upholding the order of
the CIT(A) that service charges such as lift
expenses, electricity charges, etc.
received by the assessee for various
services rendered by it should be assessed
as business income and not as income from
other sources."

. The first question arises out of the composite order passed by the Tribunal for the assessment years 1981-82 and 1984-85. However, by the present application Revenue is seeking reference of the question of law said to arise from the order of the Tribunal for the A.Y. 1984-85 only. In otherwords, no such application has been preferred by the Revenue to seek reference of the very same question of law arising from the order of the Tribunal for the A.Y. 1981-82. It means the assessment order for the A.Y. 1981-82 has been accepted by the Revenue. The said order has thus become final and conclusive. In this view of the matter, grant of the prayer made in the application will give rise to two inconsistent orders as such this application to the extent it seeks reference of the first question is not maintainable.

. So far as second question is concerned, the same cannot be gone into in view of the fact that the earlier orders relied upon by the Tribunal has not been produced by the Revenue in spite of 3 adjournments having been granted to the Revenue to enable it to produce those orders. In this view of the matter, we do not propose to entertain prayer seeking reference with respect to 2nd question framed by the Revenue.

. The application is, therefore, rejected with no
order as to costs.

(J.P. DEVADHAR,J.)

(V.C. DAGA,J.)